No. 85-1048

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1985

ROGER VIPPOLIS AND DEBORAH VIPPOLIS,

Petitioners,

-v-

THE VILLAGE OF HAVERSTRAW, NEW YORK, THE HAVERSTRAW VILLAGE POLICE DEPARTMENT, AND MICHAEL A. SQUILLINI,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Whether a municipal Police Department's failure to establish a police training program, in spite of the fact that a State statute mandated such a program, coupled with the fact that the municipality failed to provide training for police officers and failed to supervise them even after complaints were made about incidents involving unnecessary violence, constitutes gross negligence and a 'policy' that was a 'moving force' behind the subsequent beating that plaintiff received from a municipal police officer, sufficient to sustain the liability of the municipal police department for violation of the civil rights law.

2. Whether the trial record established a sufficient 'affirmative link' between the municipal policy with respect to failure to train police officers and the subsequent injuries received by petitioner.

PARTIES

The parties to this proceeding are the parties named in the caption.

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No._____

IN THE

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ROGER VIPPOLIS AND DEBORAH VIPPOLIS,

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-against-

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ON WRIT OF CERTIORARI TO THE
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PETITION FOR WRIT OF CERTIORARI

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OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit (No. 84-7046), whose judgment is herein sought to be reviewed, was decided and filed on July 16, 1985. Said opinion has yet to be published. A copy of the opinion is reprinted in the appendix hereto. Thereafter, petetioners' petition for rehearing and suggestion of rehearing en banc was denied by order dated and filed September 17, 1985.

STATEMENT OF JURISDICTION

The Petitioners invoke the jurisdiction of this Court in this Petition from the opinion and judgment of the Second Circuit, pursuant to the provisions of 28 U.S.C. Sections 1254(1) and 2101(c).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

UNITED STATES CONSTITUTION (AMENDMENT V.)

* * * [N]or (shall a person) be deprived of life, liberty, or property, without due process of law,

(Statute:)42 U.S.C. Section 1983:

Every person who, under color of any

statute, ordinance, regulations, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. * * *

STATEMENT OF THE CASE

On April 7, 1979, the petitioner Roger Vippolis was beaten viciously in front of his home by police officer Michael Squillini of the Haverstraw (New York) police department. Using a black jack, police officer Squillini struck Vippolis repeatedly on the head after Vippolis exited his car. The beating ended when Vippolis' wife and daughter rushed out of their house to his side. The incident ostensibly arose when officer Squillini attempted to warn Vippolis not to drive fast, and Vippolis challenged Squillini by responding: "What the *** are you talking about?" (Trial Record, p. 39). According to petitioner, Squillini then spontaneously attacked Vippolis and administered the beating.

Roger Vippolis was later arrested by another officer for assault, disorderly conduct, and obstruction. He was then booked and taken to a hospital for suturing of his wounds and other emergency treatment. After a criminal trial, Vippolis was acquitted of all charges.

Vippolis later brought this action against Squillini, the village of Haverstraw, and its police department under 42 U.S.C. sec.1983, for violation of his constitutional rights. His wife, Deborah, joined as plaintiff in a claim for loss of consortium as a result of the injuries Roger Vippolis suffered during the beating (See complaint, Joint Appendix pp. A9 through A15. (References to the Joint Appendix are abbreviated herein as "A.")). After trial, the jury rendered a damage verdict in the amount of 35,000 dollars for Roger Vippolis and 15,000 dollars for his wife against the municipality and its police department. Apparently crediting Officer Squillini's good faith defense, the jury did not find him personally liable (Supplemental Appendix (references

abbreviated herein as "SA") at 282-83).

The evidence at trial established that Officer Squillini had not received any formal training prior to joining the Haverstraw police force. It also established that petitioner (as well as other Haverstraw police officers) was appointed in defiance of a New York State statutory mandate (General Municipal Law section 209-q) that police officers (both full and part time) not be appointed unless they have received a certificate attesting to ". . .satisfactory completion of an approved municipal police basic training program."

Petitioners also proved that incidents of unnecessary violence in the apprehension of persons were not unusual in Haverstraw, that they had occurred before to the knowledge of senior police officials, that indeed several of them involved Officer Squillini and his infamous billy club, and that no efforts were undertaken to supervise or train police officers to prevent such incidents in the future. Indeed, all that the police chief did in response to such incidents was to attempt to

bring the victims and arresting officers together and to obtain "mutual" apologies (SA 102-03).

On the basis of the evidence, the jury was instructed that it could ascertain a pattern or policy (Trial Record 802) supported by findings of deliberate indifference on the part of the municipal defendants (id. at 801-02), sufficient to base a verdict against said defendants, if it also found that the policy or pattern was a "substantial factor" in causing petitioner's injuries (id. at 798, 803).

The jury so found.. In reaching its verdict, it answered affirmatively a written interrogatory to the effect that plaintiff sustained his claim that the municipal defendants:

> . . .hired police officers in violation of State law and provided inadequate training and supervision for officer Squillini thereby indicating the deliberate indifference or gross negligence on the part of the Municipal officials in charge (A. 600).

On appeal, the Second Circuit reversed and ordered the complaint dismissed, ruling that

petitioners had failed to prove that the beating received by petitioner Roger Vippolis was caused by the violation of a municipal policy. Petitioners pray that this Court issue a writ of certiorari for the reasons set forth below.

REASONS FOR GRANTING THE WRIT

Quite simply, this case presents, in pristine form, the civil rights issues that this Court has been waiting to decide. As this Court observed in its recent decision in Oklahoma City v. Tuttle, __U.S.___, 85 L.Ed2d 791 (June 3, 1985),

> . . . it is open to question whether a policymaker's 'gross negligence' in establishing police training practices could establish a 'policy' that constitutes a 'moving force' behind subsequent unconstitutional conduct, or whether a more conscious decision on the part of the policymaker would be required. (n.7, 85 L.Ed.2d at 804).

The court below based its reversal of the verdict in favor of petitioners upon its conclusion that:

> . . . the absence of sufficient proof that Vippolis's injuries were inflicted pursuant to a municipal policy requires dismissal of the complaint.

Petitioners respectfully submit that in light

of the record in this case, that conclusion was erroneous. The Second Circuit apparently based this conclusion upon the myopic view that petitioners' proof of pattern was limited to the fact that a single officer, Squillini, the one who administered the beating, was not provided with a pre-service training program that was expressly mandated by state statute. As is demonstrated below, although this was the centerpiece of petitioners' liability theory, it was not the sole liability feature of the case as presented by petitioners and as found by the jury in its verdict. Although it should have done so, the Second Circuit simply failed to make any evaluations of proof of requisite culpable states.

A. Elements of Petitioners' Proof of Liability.

1. Failure to provide pre-service training mandated by statute.

In reaching its incorrect decision that municipal policy had not been proven, the Second Circuit panel failed to deal with several significant fact patterns in the record. Failure to train as mandated by statute was a policy of the

Haverstraw Police Department, brought about ostensibly by the failure of the police chief to establish a training program in the County (See Supplemental Appendix 48, 92-93). As the police chief testified during friendly cross-examination by defense counsel:

> Q: What action did you take as chief of police in respect to seeing that any officer who did not have that training would get it?
> A: We attempted to have . . . a part-time police officer school held in Rockland County.
> Q: Why?
> A: Because there were none being held in Rockland County. (S.A. 92-93)

Clearly, the training breakdown was not only with respect to Officer Squillini's training but applied to the entire police force as well.

2. Failure to provide any forman training, either initially or on-the-job.

Not only did Officer Squillini suffer from a lack of statutory training, he suffered from a lack of any formal training at all, either before or after he became a policeman. He received his gun and night stick the day he took the job (SA 174). He received no manual or literature (SA 175), and

he never took courses on police procedure, constitutional law, or how to make a proper arrest (SA 176). His training consisted of being sent out ". . . with experienced men, and I learned as I worked, I learned the job." (SA 135). And even this training ended a year and a half into the job — seven years before he inflicted the beating upon petitioner. (SA 136).

Failure to provide basic and initial training was only a part of petitioners' proof of a pattern or policy of deliberate indifference. They also proved a failure of police supervision and corrective training, even in the face of complaints of violence about the very police officer who ultimately lashed out against them. Indeed, the Chief of Police admitted that his supervision of police officers, including Squillini, was limited to generally "seeing the way he performs his duties," noting his "punctuality," his "willingness to work," and his "ability to get along with others in the department." (SA 108).

3. Failure to review instances of excessive violence.

In Haverstraw, only if a civilian makes a complaint in accordance with Police Department procedures does the chief take notice that an instance of excessive force has taken place. (SA 4-6, 59). An investigation is never commenced based upon something the chief might have heard, because, according to him, that would be "hearsay" (Testimony of Chief Holland, SA6). The best example of this policy is the action taken with respect to the instance of violence at issue in this case. The chief never even learned about it until 60 days after it occurred (on the occasion of the filing of the statutory notice of claim preceeding the lawsuit) (SA 50) even though it involved an arrest in which the subject was taken to a hospital by police and received sutures for wounds received during the arrest procedure. And even when he had learned of the event through receipt of the notice of claim, the chief failed to monitor the criminal trial of plaintiff, apparently because no civilian had made a departmental complaint to him (SA59). The chief only learned of

the result (dismissal of all charges) at the conclusion of the criminal trial. (SA54). Although apparently he knew that two defense witnesses had testified, he did not learn that they had testified that petitioner had been beaten by Officer Squillini without just cause and for no reason (SA 52-53). Even when he learned that the case had been dismissed, he took no further action to look into the case. (SA 55) He did not speak with the district attorney who tried the case. (SA 53). He did not speak to the officer. He did not attempt to interview the defense witnesses. (SA This Court has very recently recognized the type of municipal conduct apparent in this record as a policy which supports a finding of civil rights liability. In Brandon v. Holt, ___U.S.___, 83 L.Ed.2d 878 (1985), the Court upheld the liability of a municipality for injuries suffered in a vicious assault by a police officer. Although there had been no proof of actual knowledge of the officer's dangerous propensities, the district court had premised liability upon the conclusion

that the municipal defendant should have had knowledge and that municipal ignorance was the result of inappropriate policies, including " . . . the inherently deficient nature of police administrative procedures involving the discovery of officer misconduct." This stemmed from a pattern of suppression of formal complaints by police officers about the conduct of their peers, as the result of an internal code of silence, little if any action in response to civilian complaints, and the routine sending of form letters assuring complaining civilians that appropriate action had been taken. (See 83 L.Ed.2d at 882 and at n.6). From this, the Court concluded that, as the result of municipal policy, police supervisors were insulated improperly from knowledge of wrongdoing.

The obvious similarities between Brandon and this case need hardly be emphasized. This Court disapproves official "ostrichism". Parts of this case reek of it. However, because the record in this case goes far beyond this issue, it is not

controlled entirely by the Brandon decision, and the writ should be granted to deal with issues in this case which go beyond the scope of this Court's decisions in both Brandon and Tuttle.

4. Failure to supervise and instruct in cases of civilian complaints.

Because of the department's policy of deliberate ignorance with respect to instances of excessive force, the only available cases of abuse involved the cases in which a complaint was actually made. In those instances, the Chief's activity was limited to bringing the parties together and eliciting apologies when he felt the officer had been wrong. (SA 84, 87, 101-02). There is no indication that any of the officers called on the carpet in such proceedings ever were instructed about how to avoid such complaints in the future. Such instruction would have been particularly apt in this case, since complaints had been made about the offending officer Squillini's misuse of a billy club on several previous occasions. Had he been instructed about what he

should do in the future, possibly the beating at issue could have been avoided. Moreover, Officer Squillini was never instructed about arrest procedures even when an incident resulted in his not being permitted to appear on the main street of Haverstraw for a period of time because of tension which resulted from a previous Squillini arrest (SA 245). In short, there apparently was no effort on the part of the Haverstraw Police Department to utilize negative incidents as training or learning experiences.

5. Failure to provide on-going training or promulgate rules

Squillini was not the only officer about whom complaints of violence had been made. A number of incidents had been reported and acknowledged by the chief. However, the record shows that as a result of the complaints, no effort was ever made to provide general guidelines about the use of force in response to the pattern of complaints. The only conclusion from this omission is that no such action took place. Again, this constitutes an instance of deliberate indifference on the part of

the Haverstraw Police Department.

From the record, it is clear that civil rights liability against the municipality could have been based on either a theory of failure to train or failure to supervise or both. The trial verdict in petitioners' favor should have been sustained on either basis. Under the circumstances, it was entirely improper for the Second Circuit to order the complaint dismissed and in the process, to deprive petitioners of even the right to a new trial under whatever standards of liability which a proper resolution of this case on appeal might have produced.

B. Causation.

From its inappropriate constriction of petitioners' theory of liability, the Second Circuit decision proceeded to conclude that plaintiff had failed to demonstrate a causative link between the policy and the beating by failing to compare the nature of training the offending officer should have but did not receive with the cursory training which he did receive (Second

Circuit Decision p. 5131-32). This reasoning fails to take into consideration that the theory of liability does not only stem from the failure to provide statutorily mandated training for police officers but from a more comprehensive pattern of indifference and from other supervisory failures.

By failing to acknowledge this more complex pattern and policy of deliberate indifference, the Court below failed to consider the fact that the pattern set forth in the record fully justifies a recovery in petitioners' favor in light of the Second Circuit's decision in Turpin v. Mailet, 619 F.2d 196 (2d Cir. 1980 cert. denied, 101 S. Ct. 577, which holds that:

> . . . where senior personnel have knowledge of a pattern of constitutionally offensive acts by their subordinates but fail to take remedial steps, the violation or the superior's inaction amounts to deliberate indifference or to tacit authorization of the offensive acts. (619 F.2d at 201).

This Court should grant the writ in order to review issues of causation which are presented here. The Tuttle plurality also highlighted in dicta the very type of causation questions which

are involved here when it reasoned that:

> There must at least be an affirmative link between the training inadequacies alleged, and the particular constitutional violation at issue. 85 L.Ed.2d at 804-05.

Of what such an affirmative link must consist is not announced in Tuttle. The record in this case provides an ideal vehicle for decision.

This Court should grant the writ in order to explore and determine standards of causation which it anticipated in Tuttle. Among other things, it should determine whether an approach such as that taken in Leite v. City of Providence, 463 F. Supp. 585 (D.R.I. 1978) should be sanctioned:

> A municipality is fairly considered to have actual or imputed knowledge of the almost inevitable consequences that arise from the non-existent or grossly inadequate training and supervision of a police force.

Petitioners respectfully submit that all of the facts necessary to make a full and complete evaluation of the issue of causation in civil rights cases seeking to impose municipal liability for civil rights violations exist in this case. They therefore request that the writ be granted.

CONCLUSION

Unreviewed, this case stands for the proposition that a police force can defy state statutory police training requirements with impugnity, issue billy clubs and guns to completely untrained and unreliable individuals who demonstrate violent propensities, neglect to train or supervise those individuals over the course of years during which those violent propensities are manifested in incidents in the line of duty, and yet still escape liability under the civil rights laws to those who are beaten and injured. Such an interpretation renders the civil rights law a virtual dead letter as a civil liability enforcement device against municipally-condoned police brutality.

If it is the Court's intention that the course of its decisions have this effect, then this Court should at least take the bull by the horns, accept this case, and in its decision so declare. If, on the other hand, [as petitioners believe] it is not the Court's intention that the civil rights laws be effectively removed from the books in cases

seeking to impose liability upon municipal entities for police brutality, then this Court should grant the writ and appropriately interpret the policy and causation standards which must be satisfied in order to impose civil liability upon municipalities, such as the village of Haverstraw and its Police Department.

The fact that this Court has twice, in dicta in Tuttle, anticipated issues presented directly by this case, renders this case particularly appropriate for review. However, even were this not the case, in no event should this Court countenance the pocket judicial veto of the civil rights statute in cases seeking to impose municipality liability for the brutality of police officers. We therefore respectfully submit that this Court should grant the writ of certiorari prayed for in this petition.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 839, 910 — August Term, 1984

(Argued: March 7, 1985 Decided: July 16, 1985)

Docket Nos. 84-7046, 84-7944

ROGER VIPPOLIS and DEBORAH VIPPOLIS,
Plaintiffs-Appellees-Cross-Appellants,

—v.—

THE VILLAGE OF HAVERSTRAW and THE HAVERSTRAW VILLAGE POLICE DEPARTMENT,
Defendants-Appellants-Cross-Appellees.

Before:

TIMBERS, NEWMAN, and KEARSE, *Circuit Judges.*

Appeal from a judgment of the District Court for the Southern District of New York (Mary Johnson Lowe, Judge), after a jury trial, awarding damages in a civil rights action against municipal defendants arising out of an episode of alleged police misconduct.

Reversed and remanded to the District Court with instructions to dismiss the complaint.

Michael F. Close, New York, N.Y. (Barry, McTiernan, & Moore, New York, N.Y., on the brief), *for Defendants-Appellants-Cross-Appellees.*

Harry E. Youtt, New York, N.Y. (Herbert W. Fischman, New York, N.Y., on the brief), *for Plaintiffs-Appellees-Cross-Appellants.*

JON O. NEWMAN, *Circuit Judge*:

This appeal concerns the proof needed to establish municipal liability under 42 U.S.C. § 1983 for an alleged denial of constitutional rights by a police officer. Roger Vippolis brought this action in the District Court for the Southern District of New York (Mary Johnson Lowe, Judge), claiming that Michael Squillini, a member of the police department of Haverstraw Village, New York, had beaten him with excessive force, arrested him on false charges, and initiated a criminal prosecution on those charges, thereby depriving him of his constitutional rights. In addition to Squillini, Vippolis named as defendants Squillini's employers, the Village of Haverstraw and the Haverstraw Village Police Department (collectively "the municipal defendants"). Responding to questions on a special verdict form, the jury exonerated Squillini of liability but found the municipal defendants liable and awarded compensatory damages against them on the theory that they had failed properly to train Squillini. The municipal defendants appeal from the judgment entered on the jury's verdict, and Vippolis cross-appeals from the District Court's denial of his motion for a new trial on damages. We reverse and remand to the District Court with instructions to dismiss the complaint.

BACKGROUND

This dispute arose out of a fight that occurred between Vippolis and Squillini when Squillini followed Vippolis to his home in order to give him a warning for a minor traffic violation. Though the parties agree that, in the course of the fight, Squillini struck Vippolis on the head with a blackjack, they dispute the circumstances leading up to that action. Vippolis testified that he verbally objected to Squillini's warning and that, without provocation, Squillini attacked him with the blackjack, striking him at least six times on the head. Squillini testified that he warned Vippolis not to drive so fast and that Vippolis responded by using obscene language to order him off the property. Squillini then informed Vippolis that he was under arrest and reached for his handcuffs. At that point, Squillini testified, Vippolis grabbed him by the throat and forced him to his knees. To protect himself from this attack, Squillini reached for his blackjack and swung three times at Vippolis, striking him on the head. Based on Squillini's version of this episode, Vippolis was arraigned on charges of assault, obstructing governmental administration, and disorderly conduct. These charges were dismissed following a state criminal trial.

Vippolis's case against the municipal defendants was based primarily on testimony of Michael Holland, chief of the Haverstraw Village Police Department, who testified on Vippolis's direct case. Through Holland's testimony, Vippolis sought to hold the municipal defendants liable on two different theories. First, by questioning Holland about police procedures for disciplining officers, Vippolis sought to establish a departmental practice of taking no action against officers charged with violating citizens'

civil rights. In connection with this theory, counsel for Vippolis questioned Holland about the handling of misconduct charges lodged against individual officers. Two of the alleged episodes of misconduct involved Squillini. Second, by eliciting from Holland the fact that Squillini had been hired without receiving the formal training required by state law,[1] Vippolis sought to establish that the municipal defendants had a policy of inadequate training of police officers. Holland conceded that he was aware that state law required all officers to complete a training program and that Squillini, a part-time officer, had not done so. Holland explained that Squillini was given "on-the-job training" by senior officers, including Holland himself. Significantly, Vippolis's lawyer did not ask Holland to describe the subjects covered in the required training program or in the on-the-job training given Squillini. On cross-examination, counsel for defendants tried to elicit this information, but Holland was not permitted to answer because objections by Vippolis's lawyer were sustained.[2] Holland was permitted to state

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[1] New York General Municipal Law § 209-q(1) (McKinney 1974) provides in pertinent part that

> no person shall . . . receive an original appointment on a permanent basis as a police officer . . . unless such person has previously been awarded a certificate . . . attesting to his satisfactory completion of an approved municipal police basic training program; and every person who is appointed on . . . other than a permanent basis as a police officer . . . shall forfeit his position as such unless he previously has satisfactorily completed . . . a municipal police basic training program for temporary or probationary police officers and is awarded a certificate . . . attesting thereto.

[2] The record does not disclose the grounds on which the objections were made and sustained. However, the defendants' lawyer attempted to explain to the District Judge that he pursued this line of questioning in order to show that there was no proximate cause between Squillini's failure to take the training program

[Footnote continued on following page]

only that Squillini did not attend the formal program because, despite Holland's efforts to establish one, there was no school for part-time officers located within the county.

Squillini also testified about his training. On direct examination, he stated that, for approximately one and one-half years, the police department "sent [him] out" with experienced officers, who taught him his duties as he worked. He further testified that, during this period, he was not permitted to "go out" by himself. On cross-examination, Squillini stated that he had applied for a position as a part-time officer in the spring of 1970 and that he was hired on July 2, 1970. On the day that Squillini was hired, the police department issued him a badge, a night stick, and a gun. Squillini stated that he received no manual on "how to become a policeman" and that he took no course in constitutional law. He also testified that he took no course on how to make arrests, but that he learned about arrest procedures through departmental "briefings" and through reading log books.

The jury's verdict was recorded on a special verdict form. With respect to Squillini's liability, the form contained three questions based on the claims of excessive force, false arrest, and malicious prosecution. The jury found that Vippolis had not established Squillini's liability on any of these claims. The verdict exonerating Squillini could have meant either that Vippolis had not proven any denial of constitutional rights or that Squillini had proven

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[Footnote continued from previous page]

and Vippolis's injuries. Since comparison of the training program and Squillini's on-the-job training was critical to the issue of proximate causation, the District Court should have permitted testimony on these matters.

his entitlement to the defense of qualified immunity. The verdict form would have been more helpful if it had asked in separate questions whether the officer h[illegible] denied the plaintiff a constitutional right in any of the three respects claimed (each of which could have been listed on the form for appropriate marking by the jury), and, if so, whether the officer had established his good-faith defense.[3]

With respect to the municipal defendants' liability, the form asked a two-part question. The first part asked if the municipal defendants were liable on the theory that they "[m]aintained a policy or custom of inaction against officers charged with violating the civil rights of citizens which resulted in the infliction of plaintiff's injuries." The jury responded to this question in the negative. The second part asked if the municipal defendants were liable on the theory that they "[h]ired police officers in violation of State law and provided inadequate training and supervision for Officer Squillini thereby indicating their deliberate indifference or gross negligence." The jury answered this question affirmatively and awarded damages of $35,000 to Vippolis for his injuries and $15,000 to his wife for loss of consortium. Judge Lowe rejected Vippolis's claim on his motion for a new trial on damages that the interrogatory responses were inconsistent, pointing out that the jury could have concluded that Squillini denied Vippolis one or more constitutional rights, that the municipal defendants were liable for causing the

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[3] We do not decide whether the good-faith defense, now limited to the single inquiry of whether circumstances existed to justify an objectively reasonable good-faith belief in the lawfulness of the defendant's actions, *see Harlow* v. *Fitzgerald*, 457 U.S. 800 (1982); *Pollnow* v. *Glennon*, 757 F.2d 496 (2d Cir. 1985), is applicable to claims for denial of constitutional rights based on use of excessive force and malicious prosecution.

violation, and that Squillini was not personally liable because he had established his good-faith defense.

We need not consider all of the arguments raised on appeal by the municipal defendants because we agree that absence of sufficient proof that Vippolis's injuries were inflicted pursuant to a municipal policy requires dismissal of the complaint.

DISCUSSION

The Supreme Court has recently considered the issue of whether a municipality's liability under section 1983, authorized in *Monell* v. *New York City Dep't of Social Services*, 436 U.S. 658 (1978), can be predicated on evidence of a single episode of unconstitutional action taken by a municipal employee. *Oklahoma City* v. *Tuttle*, 53 U.S.L.W. 4639 (U.S. June 3, 1985). Though, regrettably, the Court did not issue a majority opinion for the guidance of lower courts on this frequently litigated issue, both Justice Rehnquist's plurality opinion for four members of the Court and Justice Brennan's concurring opinion for three members of the Court make it clear that the plaintiff's evidence in this case is insufficient to support municipal liability.

A plaintiff who seeks to hold a municipality liable in damages under section 1983 must prove that the municipality was, in the language of the statute, the "person who . . . subject[ed], or cause[d] [him] to be subjected," to the deprivation of his constitutional rights, 42 U.S.C. § 1983. As explained in *Tuttle*, this means that an official policy or custom must be shown to be the cause of the deprivation of constitutional rights. *Id.* at 4642 (plurality opinion); *id.* at 4644 (Brennan, J., concurring). The

Court further explained that this element of causation has two components. The plaintiff must first prove the existence of a municipal policy or custom in order to show that the municipality took some action that caused his injuries beyond merely employing the misbehaving officer. Second, the plaintiff must establish a causal connection—an "affirmative link"—between the policy and the deprivation of his constitutional rights. *Id.* at 4643 & n.8 (plurality opinion); *id.* at 4645 (Brennan, J., concurring). The jury instruction at issue in *Tuttle* was improper because it permitted the jury to find municipal liability without any proof beyond the wrongful action taken by the officer. The Court concluded that proof of a single incident of excessive force was not sufficient to establish either that the municipality had a policy of inadequate training of police officers or that such a policy caused the plaintiff's injury. *Id.* at 4642-43 (plurality opinion); *id.* at 4645-46 (Brennan, J., concurring).

Like the plaintiff in *Tuttle*, Vippolis sought to establish that his injuries were inflicted pursuant to a municipal policy of inadequate training of police officers. However, rather than ask the jury to infer a municipal policy of inadequate training from an episode of alleged unconstitutional conduct, Vippolis sought to have the policy inferred from the fact that the municipal defendants hired Squillini knowing that he had not completed a training program required by state law. This proof fails to satisfy his burden under *Monell* and *Tuttle*. Even if a decision to give one officer inadequate training could be said to amount to a municipal policy,[4] Vippolis failed

[4] The Supreme Court may soon provide guidance on this issue since it has granted review in a case presenting the question

[Footnote continued on following page]

to prove that Squillini's training was inadequate. Vippolis made no effort to establish what training Squillini received and what further training he would have received had the municipal defendants complied with state law. While the fact that Squillini was hired in violation of state law may have been of some relevance, that fact alone is not sufficient to establish that his training was inadequate, much less to establish the existence of a municipal policy of inadequate training of police officers. The alleged policy of inadequate training, like the policy alleged in *Tuttle*, and unlike the policy proved in *Monell*, would not itself be unconstitutional, a circumstance that increases the threshold of required proof. "[S]ome limitation must be placed on establishing municipal liability through policies that are not themselves unconstitutional, or the test set out in *Monell* will become a dead letter." *Tuttle, supra*, 53 U.S.L.W. at 4643 (plurality opinion).

Similarly, by offering no evidence on which the jury could compare the instruction provided in the training program with that actually given Squillini, Vippolis failed to prove that the alleged policy of inadequate training caused the alleged denial of his constitutional rights. For a victim of police brutality to establish the requisite causal connection between his injuries and a municipal policy of inadequate training, he must make some showing that specific deficiencies in the training given police officers

---

[Footnote continued from previous page]

whether a single official decision that directly causes a deprivation of constitutional rights amounts to a municipal policy for purposes of section 1983. *Pembaur* v. *City of Cincinnati*, 53 U.S.L.W. 3877 (U.S. June 18, 1985) (granting certiorari in 746 F.2d 337 (6th Cir. 1984)). The plurality opinion in *Tuttle* reserved the issue of whether a policy of "general 'inadequate training' . . . can ever meet the 'policy' requirement of *Monell*." 53 U.S.L.W. at 4643 n.7.

led the misbehaving officer to engage in the alleged misconduct. The record contains no evidence concerning the police procedures covered by the training program to show, for example, that the program would have instructed Squillini how to make arrests and how to subdue an abusive suspect. Nor does the record show whether Squillini's on-the-job training provided inadequate instruction in these subjects. Under these circumstances, a jury could not rationally find that the municipal defendants' failure to require Squillini to participate in the training program caused Vippolis's injuries.[5]

Since Vippolis's failure to meet his burden of proving causation requires dismissal of the complaint, his cross-appeal becomes moot.[6] The judgment of the District Court is reversed, and the case is remanded to the District Court with instructions to dismiss the complaint.

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[5] The question on the special verdict form under which the jury found municipal liability did not in terms require the jury to find causation. Rather, the question asked only if the municipal defendants had hired officers in violation of state law and provided inadequate training for Squillini, thereby indicating their deliberate indifference or gross negligence. The jury charge did include instructions on the element of causation, and the jury may have understood, despite the wording of this question, that the municipal defendants could be held liable only if Vippolis established that a municipal policy caused his injuries. However, in cases where the existence of a municipal policy is in dispute, a special verdict form should ask the jury separately if the plaintiff has proved, first, the existence of a municipal policy and, second, that the policy caused his injury.

[6] The cross-appeal pressed only a claim that a new trial on damages was warranted because one of the jurors was acquainted with the defendants' medical expert and an issue concerning damage computation, matters that have no possible bearing on our holding that the evidence is insufficient to support municipal liability.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 84-7046
84-7944

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, one thousand nine hundred and eighty-five.

ROGER VIPPOLIS and DEBORAH VIPPOLIS,
Plaintiffs-Appellees,
Cross-Appellants,

vs.

THE VILLAGE OF HAVERSTRAW, THE HAVERSTRAW VILLAGE POLICE DEPT. and MICHAEL A. SQUILLINI,
Defendants,

THE VILLAGE OF HAVERSTRAW and THE HAVERSTRAW VILLAGE POLICE DEPT.,
Defendants-Appellants,
Cross-Appellees.

(Filed September 17, 1985)

A petition for rehearing containing a suggestion that the action be heard in banc having been filed herein by counsel for the plaintiffs-appellees, cross-appellants, Roger Vippolis and Deborah Vippolis,

Upon consideration by the panel that heard the appeal, it is

Ordered that said petition for rehearing is DENIED.

It has further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

s/ Elaine B. Goldsmith
Elaine B. Goldsmith,
Clerk

Supreme Court, U.S.
FILED
FEB 26 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1048

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ROGER VIPPOLIS and DEBORAH VIPPOLIS,

Petitioners,

vs.

THE VILLAGE OF HAVERSTRAW,
THE HAVERSTRAW VILLAGE POLICE DEPT.
and MICHAEL A. SQUILLINI,

Respondents.

BRIEF IN OPPOSITION TO CERTIORARI

New York, New York
24 February 1986

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Respondents, VILLAGE OF HAVERSTRAW, HAVERSTRAW VILLAGE POLICE DEPARTMENT, and MICHAEL A. SQUILLINI, defendants below, on this brief oppose the application for certiorari by plaintiffs below, ROGER and DEBORAH VIPPOLIS.

Order and Opinions Below

The order of the United States Court of Appeals for the Second Circuit sought to be reviewed here is reported officially at 768 F. 2d 40 (2d Cir. 1985). There are no relevant opinions in the district court.

Counterstatement of the Case

A. The Incident.

Both sides agree that respondent Squillini, then on duty as a part-time police officer for the respondent Village of Haverstraw, began following petitioner Roger Vippolis's car from the corner of 9W and Gurney Avenue in Haverstraw (TR at 29; TR at 478).[1] According to Squillini, Vippolis "floored" his vehicle as he

1. "TR" refers to the pages of the trial transcript.

approached the yellow light (TR 478). According to Vippolis, he had stopped there at a red light (TR 29), and then proceeded a short distance to his home driveway, never exceeding 30 mph (TR 30), where he got out (TR 31) with a gallon of milk in his left hand and a leather jacket and keys in the right hand (TR 38). Squillini appeared slowly in the police car and stopped (TR 38), rolled down his window and said "you'd better slow that car down, buddy" (TR 39). Vippolis responded "what the **** are you talking about?" (Ibid.) Squillini thereupon got out of his car, pulled out a blackjack and started hitting Vippolis on the head (TR 40), inflicting at least six blows to Vippolis's head with a blackjack (TR 41). This took 30 seconds to a minute (TR 42). Vippolis protected himself (ibid.) and never struck Squillini (ibid.). The incident ended when Vippolis's wife and

daughter came out of his house. Vippolis went inside and Squillini went to his car (TR 42-43).

According to Squillini (who prevailed on all issues before the jury), he followed Vippolis from 9W and Gurney Avenue, intending to pull him over and give the driver a warning (480). He followed the Vippolis car to Vippolis's driveway, not knowing that it was Vippolis whom he was following[2] (TR 480-481). While still in his car Squillini told Vippolis "I would advise you to slow the vehicle down before someone gets hurt" (TR 486). Vippolis responded "What the **** do you want here? Get out of here" (TR 487). Squillini then asked for license and registration (ibid.), and

2. There was extensive testimony about a prior incident where allegedly Squillini came upon Vippolis beating one Pablo DeJesus, but the jury verdict in Squillini's favor renders this testimony moot.

Vippolis responded with "Get the **** off my property" (TR 487). Squillini said "you are under arrest", reached for his handcuffs, and "he [Vippolis] had me by the throat" (TR 487). A scuffle ensued and Squillini used his blackjack "three times" to get Vippolis off him (TR 487). Vippolis then backed off, went into the house (TR 488). Squillini radioed for assistance (TR 489) and officer Scorese came.

Both sides agree that Scorese then knocked on Vippolis's door and put Vippolis under arrest (TR at 45, 52-53; TR at 490; TR at 422). According to Vippolis (TR 47), he was taken without any handcuffs to the police station (TR 48), where he made a phone call (TR 52a). Vippolis was put in a cell (TR 53), taken later to Nyack Hospital Emergency Room (TR 53), driven back to the police station approximately at 10 p.m. (TR 54) where he

met his family (TR 55) and was arraigned and released at about midday (TR 56).

Vippolis was charged with assault (New York Penal Law §120.05), obstructing governmental administration (P.L. §145.05) and disorderly conducted. P.L. §240.20. He was acquitted on all charges.

B. Plaintiffs' Trial Proof Against Respondent Village.

As the Second Circuit noted (3a-4a), plaintiffs at trial presented two theories of municipal liability, only one of which the jury resolved in their favor: "Vippolis sought to establish a departmental practice of taking no action against officers charged with violating citizens' civil rights" (3a-4a). The jury heard extensive evidence about prior alleged incidents of police misbehaviour and the police department's response to them (TR at 195-321). This line of proof

failed, however, because the jury resolved the allegation of municipal inaction in favor of the defendants (see Interr. 4(a) at 13a).[3] *The record on these issues must* therefore be read in the light most favorable to respondents and not as petitioners read it. In petitioners' second theory of liability, on which they did prevail, "Vippolis sought to establish that the municipal defendants had a policy of inadequate training of police officers" (4a). His proof, however, showed only that Squillini had been hired without taking a police training course mandated by State law (4a). It is this line of proof which the Second Circuit held inadequate on two different grounds:

First: "Vippolis failed to prove that Squillini's training was inadequate.

3. The jury verdict sheet is attached here so as an appendix numbered (consecutively from the petition) 13a, 14a.

Vippolis made no effort to establish what training Squillini received and what further training he would have received *had* the municipal defendants complied with State law" (8a-9a);

Second: "Similarly, by offering no evidence on which the jury could compare the instruction provided in the training program with that given Squillini, Vippolis failed to prove that the alleged policy of inadequate training caused the alleged denial of his constitutional rights" (9a).

Neither ground warrants review here, limited as each is to this particular trial record.

Argument

Summary

Plaintiffs-Petitioners present as

"facts" every allegation they had hoped to persuade the jury, but neglect to advise the Court that under the verdict sheet (attached as 13a-14a) they lost 4 out of 5 liability issues decided, in particular, the jury rejected one of their two theories of municipal liability. Further, plaintiffs-petitioners took no appeal from the liability verdict or the judgment in favor of Squillini; thus, the bulk of their petition consists of questions and contentions they chose not to present to the Second Circuit.[4] Their petition essentially is a complaint that the court below misread this particular record, an issue not worthy of certiorari. See Rule 17.1.

4. Since Squillini was not a party to the appeal or cross appeal in the Second Circuit, he cannot be made a respondent here.

POINT I

Petitioners Misstate the Record

Because petitioners fail to acknowledge in their petition that (i) the jury returned a verdict in favor of Squillini on all issues; and (ii) that the jury resolved the municipal "policy of inaction" issue in favor of the defendants; and that (iii) plaintiff-petitioner did not appeal either point (jury's verdict 1,2,3 and 4(a))(13a) to the Second Circuit, much of their petition alleges as "facts" plaintiffs' version of trial issues resolved against them by the jury. We respond seriatim.

Petitioner Roger Vippolis was <u>not</u> "beaten viciously," petition at 3: The verdict established that Squillini did not use excessive force (answer 1 at 13a).

The record contains no evidence that any officer other than Squillini (a part-timer) was hired without the requisite education certificate required by state law (petition at 5), a point noted by the court below (4a, 8a).[5]

Contrary to the petition at 5, petitioner proved nothing about other alleged incidents of "unnecessary violence," and that "no efforts were undertaken to supervise or train police officers." This issue was resolved in respondents' favor (4a), a point about which the petition at 6 hardly is candid. Similar is the attempt to

5. This is consistent with Oklahoma City v. Tuttle, __U.S.__, 53 U.S.L.W. 4639 (3 June 1985), which disapproved a "single incident" instruction as a predicate for municipal liability; the Second Circuit did not decide whether "a decision to give one officer inadequate training could be said to amount to a municipal policy," (8a) (emphasis supplied), because "Vippolis failed to prove that Squillini's training was inadequate" (9a).

circumvent the jury verdict at pp.10-11 of the petition by pretending petitioners "proved a failure of police supervision" and "failure to review instances of excessive violence."

Petitioners also manufacture allegations with no basis in the record. The petition at 15 states that "the record shows that as a result of the complaints, no effort was ever made to provide general guidelines about the use of force." The record "shows" no such theory because no proof was ever attempted on these lines, and no questions were ever asked about the training of any police officer besides Squillini.

POINT II

The Questions Alleged in the Petition are not Presented by the Record

The questions alleged in the petition

either (i) were never presented at trial, or (ii) were resolved against plaintiffs by the jury verdict. Further, as the Second Circuit noted (4a-5a), it was plaintiffs-petitioners themselves who (wrongfully) succeeded in keeping out of the record evidence on training which they now wish reviewed (4a-5a n.2).

The record contains no evidence one way or the other about a "Police Department's failure to establish a police training program" (petition at i); no such theory was ever asserted below. Plaintiff's trial theories were confined to the two lines of proof detailed in the Second Circuit's opinion at 3a-4a.

Ccntrary to question 1, it is <u>not</u> true "that a state statute mandated such a program." The statute (quoted at 4a n.1) required that each officer hired bear a certificate from a formal municipal

training program, but did not require municipalities themselves to undertake the formal certificate training, which is available elsewhere.

It is not in the record whether "the municipality failed to provide training for police officers." Proof was attempted only as to Squillini, and there are no questions in the record about the training of any other policeman.

It is not true that the respondents "failed to supervise [policemen] even after complaints were made about incidents involving unnecessary violence."[5] Question Presented 1. This issue was litigated extensively and resolved by unappealed jury verdict for respondents (4(a)).

---

5. Brandon v. Holt, 471 U.S. ___ (1985) held that a judgment against a municipal officer in his official capacity imposes liability upon the city which employs him. No officer having been found liable in any capacity, Brandon is inapplicable here.

POINT III

Petitioners' Complaints that the Court Below Incorrectly Read the Record Are not Worthy of Certiorari

At bottom, the petition really challenges not the legal correctness of the Second Circuit's view of the law, but rather that court's reading and comprehension of a particular trial record, which the petitioners characterize as "myopic" (petition at 8). The petition really raises only the question of whether the court below correctly reviewed the evidence of a 900-page trial record with 150 pages of exhibits, e.g., petition at 8: "the Second Circuit simply failed to make any evaluations of proof. . ."; "the Second Circuit panel failed to deal with several significant fact patterns in the record"; ibid at 16: "its inappropriate constriction of petitioners' theory of

liability"; ibid at 17: "[b]y failing to acknowledge this more complex pattern and policy of deliberate indifference, the court below failed to consider the fact that the pattern set forth in the record fully justifies a recovery".

It is simply not within the purview of certiorari to review whether the Second Circuit has correctly read a particular trial record. Rule 17.1. Further, petitioners' failure to disclose candidly that the jury decided one of the two litigated issues of municipal liability in favor of respondent Village should alone be grounds to deny the petition. Rule 21.5.

Conclusion

The petition for a writ of certiorari should be denied.

New York, New York
24 February 1986

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APPENDIX

VERDICT SHEET

1. Do you find that plaintiff has sustained his claim that Officer Squillini beat him with excessive force?

____ Yes or ____ No.

2. Do you find that plaintiff has sustained his claim that Officer Squillini arrested him without a good faith belief in the legality of the arrest?

____ Yes or ____ No.

3. Do you find that plaintiff has sustained his claim that Officer Squillini initiated the criminal prosecution from malice and falsely testified in support of those charges?

____ Yes or ____ No.

4. Do you find that plaintiff has sustained his claim that the Village of Haverstraw and the Village Police Department are liable under the theory that they:

(a) Maintained a policy or custom of incaction against officers charged with violating the civil rights of citizens which resulted in the infliction of plaintiff's injuries?

____ Yes or ____ No.

and/or

(b) Hired police officers in violation of State law and provided inadequate training and supervision for Officer Squillini thereby indicating deliberate indifference or gross negligence on the part of the Municipal officials in charge.

____ Yes or ____ No.

If your answer is "No" to all of the above questions you do not answer the following. Only if your answer is Yes to one or more of the above do you answer the following.

5. What is the amount of the compensatory damages for Roger Vippolis: $35,000.

6. What is the amount for compensatory damages for plaintiff Deborah Vippolis: $15,000.

7. (a) Do you find that plaintiff is entitled to punitive damages against Officer Squillini

____ Yes or ____ No.

(b) If your answer to 7(a) is Yes, in what amount.

$_____.

(No. 7 crossed out by jury)

No. 85-1048

Supreme Court, U.S.
FILED
MAR 10 1986
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1985

ROGER VIPPOLIS AND DEBORAH VIPPOLIS,

Petitioners,

-v-

THE VILLAGE OF HAVERSTRAW, NEW YORK, THE HAVERSTRAW VILLAGE POLICE DEPARTMENT, AND MICHAEL A. SQUILLINI,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO CERTIORARI

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No. 85-1048

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Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO CERTIORARI

PRELIMINARY STATEMENT

This Brief replies to the brief submitted by respondents in opposition to the petition for writ of certiorari. This case presents

the issue whether the Village of Haverstraw, New York and its police department should be liable for injuries inflicted during a forcible attempt to arrest petitioner for a minor traffic infraction. Respondents oppose the petition largely upon the grounds that the jury resolved essential factual issues against petitioners, thus precluding the review which petitioners seek in this Court. For the reasons which follow, petitioners respectfully submit that respondents' purported reasons for opposing the granting of the writ are entirely unfounded.

Respondents' Unfounded Reliance Upon the Verdict Sheet

Although respondents may dream of a looking glass world in which a *petit* jury's answer to an inartfully worded interrogatory succeeds in depriving this Court of its opportunity to review important legal issues, their dreams are, by reason of the patent illogic of their reasoning, in vain. The jury did not determine that plaintiff failed to prove an institutional failure to supervise and train police officers. It merely registered its conclusion that petitioners failed to prove that the municipal defendants maintained a policy of "inaction against" officers "charged with" violating the civil rights of citizens. (*See* answer to interrogatory number 4(a) on verdict sheet, attached as appendix to respondents' brief at p. 13a.) Obviously this langauge connotes nothing more nor less than the narrow subject of disciplinary "action against" police officers. It does not cover the subject of training or supervision.

The Instructions on Policy and Pattern

Nowhere in respondents' tortured constriction of the jury questionnaire is any consideration given to the trial court's charge to the jury. It must be presumed that the jury followed the instructions given to it at the conclusion of the trial. The jury based its verdict, as instructed, upon the institutional conduct and/or inaction of the municipal defendants.

The trial court's instructions were explicit. The jury would only be justified in returning a plaintiff's verdict against the municipal defendants if it found the constitutional violation to be the product of a "policy or custom" (SA297-98) or the institutional "deliberate indifference" of the municipal defendants (SA301). In defining these terms, the trial court never limited itself to single instances involving the individual police officer defendant. It defined "policy or custom" to comprise either the "repeated" condonation of police conduct that violated constitutional rights (SA297) or "municipal inaction, such as the failure to train or discipline *officers* who violated the civil rights of its citizens." (SA297-98). (Note the plural tense in the italicized word.) Similarly, the court defined "deliberate indifference" as including the intentional and knowing employment of police ". . .*officers* without such [statutorily-required] training . . ." (SA301-02) (again note the use of the plural tense in the italicized word). The court also instructed that the jury could infer deliberate indifference from ". . . a pattern of omissions" of specific, statutorily-imposed duties (SA302).

In light of these instructions, to argue to this Court that the jury's verdict was limited only to the misconduct of Officer Vippolis and that the jury, by answering interrogatory no. 4(a), found expressly that the municipal defendants did not fail to train, supervise or require statutory training qualifications with respect to officers other than Vippolis, is nothing less than sheer sophistry.

The Trial Record

The record amply supports the jury's verdict on issues of policy or pattern. Contrary to the sophistry of respondents' brief, the proof did not apply exclusively to the individual defendant Squillini's training and supervision but to the entire department. On the subject of training programs in compliance with statutory requirements, the police chief testified as to his knowledge about

the statute's requirements. However, he added, ". . . it did not set in motion the mechanism for the municipalities to give this formal training." (SA49) — clearly a reference to municipal policy in general. Later, in questioning by his own counsel, the chief was asked the following question:

> "Q. What action did you take as the chief of police in respect to seeing that *any officer* who did not have that training would get it?" (SA92).

This question was not by its terms limited in any way to Officer Squillini but to "any officer." The chief answered:

> "We attempted [apparently unsuccessfully] to have . . . a part time police officer's school held in Rockland County.
>
> Q. Why? A. Because there were none being held in Rockland County." (SA92-93).

Again, no limitation to Officer Squillini's situation alone, which could, had he been the only unqualified officer, easily have been satisfied by a scholarship to attend a school elsewhere. Instead, the answer, like the question, contemplated a training problem common to the entire department, thus embracing the need for an entire, part-time officer's training schoool.

That the record bore these inferences is demonstrated by the fact that the jury expressly so found, *i.e.*, that the defendants ". . . hired police *officers* in violation of State law . . ." (Interrogatory 4(b), Respondents' Appendix p. 13a). (Again note the plural, rather than a limitation, as respondents would have it, to Officer Squillini).

As we stated in our petition, the policy or pattern was not

limited to a failure to comply with the state training certificate statute. It included the general failure to provide entry training (*see* Petition, p. 9), the failure to supervise (*see* Petition, p. 14), the failure to provide on-going training or promulgate rules with respect to the use of force (*see* Petition, p. 15), and the failure to review instances of excessive violence (*see* Petition, pp. 10-11). Contrary to the respondents' stock rejoinder that the proof only applied to Officer Squillini, the record demonstrates policies and patterns common to the entire department. It includes, especially, a review of numerous complaints and incidents of the use of allegedly unnecessary force by police officers and the police chief's handling of them (SA84, 87, 101-102). And, as has been noted in the petition, the record of these incidents fails to demonstrate that at any time any officer was given instruction or training with respect to how he should handle the use of force in the future (*see* Petition, pp. 9, 14-15).

Again, contrary to respondents' assertions, the issues of supervision and general training were very much a part of the litigation, and they were not resolved against petitioners by the jury. Interrogatory 4(a) on which respondents place such heavy emphasis, makes no mention about "supervision" or general training. On the other hand, the jury's response to Interrogatory 4(b) revealed a specific finding that the municipal defendants failed to train or supervise Officer Squillini adequately. [Also note plaintiff's counsel's request for further elaboration on the subject of "failure to supervise" at side bar (SA316).] The significance of this court's decision in *Oklahoma City v. Tuttle*, 85 L. Ed. 2d 791 (1985) need not be emphasized here.

Significantly, respondents failed to reply at all to petitioner's contention that the Court should review this case in order to deal with the pattern of municipal ignorance and official "ostrichism" with respect to incidents of police violence in Haverstraw (*see* Petition, pp. 11-14), in spite of the significance of this pattern

in light of this Court's decision in the case of *Brandon v. Holt*, ____ U.S. ____, 83 L. Ed. 878 (1985).

Respondents also fail to deal in any way with the petition's discussion of the issue of causation (*see* Petition, pp. 16-18). Petitioners reiterate that the court below mishandled this issue because it failed to acknowledge the fact, demonstrated here and in the petition, that municipal liability was founded upon more than the isolated violence of a single police officer. This case presents a vehicle for this Court to evaluate what should comprise the "affirmative link" between training and supervision inadequacies and the constitutional violations upon which liability in civil rights actions is based [*see* Petition at p. 18 and *Oklahoma City v. Tuttle*, ____ U.S. ____, 85 L. Ed. 2d 791 (1985)]. Respondents' only apparent effort to disarm the petition on this very vital point is in the highly inappropriate insinuation that there is something improper in challenging the Second Circuit's interpretation of the record (*see* Brief in Opposition at pp. 16-17). Petitioners' only rejoinder to this is that they are not seeking to quibble with the court below on an insignificant issue of interpretation; they are challenging the correctness, as a matter of law, of the Second Circuit's decision—a function which is at the very heart of this Court's process of review on certiorari.

CONCLUSION

The petition should be granted for all of the reasons originally set forth. Respondents' opposition, aside from presenting a meaningless demonstration of sophistry in the semantics of a jury questionnaire, fails to deal with any of the important issues set forth in the petition. The verdict should either have been sustained, or the case should have been remanded for a new trial. The issues presented on this appeal deal with the question of municipal liability based upon policies or patterns of indifference and inaction in the training and supervision of police officers in the Village

of Haverstraw, New York. That the offending officer was only working "part-time," as respondents, for some reason, repeatedly emphasize, serves to highlight the need for intensive training and supervision, if professional police standards are to be preserved. The fact that liability was not imposed upon the individual officer is not material to the issues upon which this Court should rule. Indeed it is the issue of municipal liability, apart from the liability of any individual defendant, which requires further treatment and clarification by this Court, based upon the authorities cited in the petition. For the foregoing reasons, we again submit respectfully, that the petition should be granted.

Respectfully submitted,

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